



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 24, 2003

Mr. Steven D. Monté  
Assistant City Attorney  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2003-2732

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179981.

You inform us that the City of Dallas (the "city") received a request for two particular offense reports.<sup>1</sup> You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Under section 552.301(e), a governmental body that wishes to withhold information from disclosure must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You have not provided this office with a copy of the written request for information and have thus failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of

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<sup>1</sup>Because you have not submitted the request for information, we take our description from your brief.

openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Because section 552.101 can provide a compelling reason for withholding information, we will address your arguments. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses statutory confidentiality provisions such as section 58.007 of the Family Code, which provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2).

You assert that offense report number 0884340-L involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. However, the report contains conflicting information regarding the age of the suspect, listing it as both sixteen and eighteen. If the suspect was indeed sixteen at the time of this incident, the report is subject to section 58.007 and, because no exception appears to apply, must be withheld pursuant to section 552.101 of the Government Code. However, if the suspect was seventeen years old or older at the time of the incident, the report may not be withheld under section 552.101 on the basis of section 58.007.

In the event that report number 0884340-L is not confidential, we note that it includes information that may nevertheless be subject to section 552.130 of the Government Code. This section excepts from disclosure "a personal identification document issued by an agency

of this state or a local agency authorized to issue an identification document.” Thus, if the marked “ID CARD” number refers to a document issued by an authorized Texas agency, it must be withheld pursuant to section 552.130. If it does not refer to such a document, it is not excepted under section 552.130 and may not be withheld on that basis.<sup>2</sup>

In summary, report number 088430-L must be withheld pursuant to section 552.101 and section 58.007 only if the listed suspect is at least ten but younger than seventeen years old at the time of the incident. If this report is not subject to section 58.007, the marked information must nevertheless be withheld under section 552.130 if it refers to an identification document issued by an authorized Texas agency. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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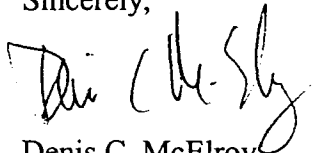
<sup>2</sup>We note that the submitted information also includes motor vehicle record information relating to the requestor. As section 552.130, which also excepts such information from disclosure, is designed to protect an individual’s privacy interest, the requestor has a special right of access to her own information. *See* Gov’t Code § 552.023.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 179981

Enc. Submitted documents

c: Ms. Monica Leatch  
714 Hustead Street, Apt. 14  
Duncanville, Texas 75116  
(w/o enclosures)